

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1117 of 1997

to

FIRST APPEAL No 1130 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHANKERLAL TRIKAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AMIT C NANAVATI for Appellants

MR SJ DAVE, AGP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 02/03/98

ORAL COMMON JUDGEMENT [PER ; Y.B.BHATT,J]

Heard the ld. Counsel for the appellant.

Appeals admitted. Mr. SJ Dave, AGP waives service

on behalf of the respondent State.

At the joint request of the ld. Counsel for the respective parties, these appeals are taken up for final hearing today.

On plain reading of the impugned common judgment and awards passed under Sec.18 of the Land Acquisition Act, it becomes obvious that the Reference Court has found that the evidence led by the claimants on the question of annual agricultural income to be unsatisfactory and not acceptable and, therefore, the Reference Court did not find it practicable to apply the capitalisation method of determining the market value. Secondly, the Reference Court observed that in absence of any other evidence in respect of market value of the acquired land, there is no other cogent and reliable evidence for determination of the market value and that, therefore, reference must fail. In this context, we are constrained to observe that although the approach may be technically permissible, it does not do substantive justice inasmuch as the claimants would then be left with the only option of accepting the award passed by the Land Acq. Officer. We are consciously aware that such award usually represents hardly 10 to 20% of the market value in general.

In this context, we are of the opinion that interest of justice would best be served to quash and set aside the award in the present group of appeals only and to remand the same back to the Reference Court for a fresh decision after hearing the parties and in accordance with law.

It is clarified that the claimants as also the State would be at liberty to lead additional evidence if so advised. Ld. Counsel for the respondent State was not able to seriously contest the present view expressed by us herein.

These appeals are, therefore, allowed with no orders as to cost.

After remand, the Reference Court shall give due priority to the rehearing and re-decision of Land Reference Cases bearing in mind that the same are of the year 1989.

Direct service permitted.

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